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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,012	07/15/2003	Samuel Leven	7280-2-1	8599

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EXAMINER

MACNEILL, ELIZABETH

ART UNIT PAPER NUMBER

3767

DATE MAILED: 11/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/620,012

Applicant(s)

LEVEN, SAMUEL

Examiner

Elizabeth R. MacNeill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 12-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 12-30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 28 September 2006.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sensors described in claim 2 must ALL be shown in the same drawing, including the "electro-cardio signals" detector must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 2 is objected to because of the following informalities: acetylcholine is misspelled. Appropriate correction is required.

***Specification***

4. The disclosure is objected to because of the following informalities: acetylcholine is misspelled in paragraph 0010. The Examiner notes that acetylcholine is correctly spelled in the figures.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 3-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Merki et al (US 5,002,055).

Regarding claim 1, Merki et al teaches a wearable health monitoring device comprising a plurality of sensors (1,2,3,44), a sensor interface (7), a memory (10), a processor (9,16), a wireless transmitter (14), activated both by the wearer and automatically, and a viewing screen (12,13,28), activated both by the user and automatically.

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Regarding claim 3, the device comprises a wireless transceiver (14) communicating with a processing device.

Regarding claim 4, the wireless transceiver is configured to detect available communication links.

Regarding claim 5, the device comprises a viewing screen (12,13,26) for displaying at least one of data from said sensors, data received by said transceiver from a remote source, and device diagnostic information.

Regarding claim 6, the processor (10,9,16) is programmed with an individualized patient profile establishing ranges of normal health indicators, wherein said processor compares the health indicator data with the patient profile.

Regarding claim 7, the processor signals said medication delivery system to regulate the delivery of at least one substance (17,18).

Regarding claim 8, the device comprises a wireless transceiver (14) through which said processor communicates with the medication delivery system.

Regarding claims 9 and 11, the medication delivery system is a medication pump (17,18).

Regarding claim 10, the device comprises a wireless transceiver (14) for communicating with an authorized computing system, wherein said processor signals said medication delivery system to regulate delivery of a substance responsive to receiving a medication delivery signal from the authorized computing system.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over Merki et al.

Regarding claim 2, Merki et al disclose a pH-sensor, blood pressure sensor, and a temperature sensor. They further disclose that "It is obviously also possible to connect other sensors, e.g., those for measuring the pulse, respiratory rate, potential differences or biochemical parameters."

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a heart murmur, heart intensity, lung noise, occlusion, adrenal level, acetylcholine level and/or sodium levels sensors in order to provide the most complete picture of the patients physiological parameters to the user of the device.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Salem (4,909,260); Clemens (US 4,055,175); Petre (US 4,392,849); Zegers de Beyl (US 4,551,133); Feingold (US 4,871,351).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth R. MacNeill whose telephone number is (571)-272-9970. The examiner can normally be reached on 7:00-3:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ERM

*Elizabeth R. MacNeill*  
11/19/06

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Sirmons*